

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELISA SERRANO (aka Elisa	)	NO. CV-05-0364-LRS
Serrano Vasquez),	)	
	)	ORDER GRANTING DEFENDANT'S
Plaintiff,	)	MOTION FOR SUMMARY JUDGMENT
	)	
v.	)	
	)	
UNITED STATES CITIZENSHIP AND	)	
IMMIGRATION SERVICES,	)	
	)	
Defendant.	)	

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On December 18, 2006, Defendant United States Citizenship and Immigration Services ("Defendant") filed a motion for summary judgment. (Ct. Rec. 20). Plaintiff filed a timely response to Defendant's motion for summary judgment on January 30, 2007. (Ct. Rec. 29). Plaintiff, however, provided no specific set of facts in opposition to Defendant's motion for summary judgment. Pursuant to Local Rule 56.1(d), the failure to file a statement of specific facts in opposition to a motion for summary judgment allows the Court to assume the facts as claimed by the moving party exist without controversy.

**BACKGROUND**

Plaintiff seeks de novo review of the denial of her application for Naturalization by Defendant. (Ct. Rec. 4). Plaintiff's application was denied when Defendant determined she was ineligible for naturalization because she had not maintained good moral character. Specifically, Defendant found that Plaintiff had lied on her application with the intent to gain immigration benefits.

1 On February 1, 1997, Plaintiff was arrested by Immigration  
2 and Naturalization officials and charged with alien smuggling.  
3 (Ct. Rec. 22, p. 1). On or about February 9, 2002, Plaintiff  
4 filed an application form for Application for Naturalization.  
5 (Ct. Rec. 22, p. 2). As part of the application, she was asked if  
6 she "ever knowingly and for gain helped any alien to enter the  
7 U.S. illegally." She responded "no." (Ct. Rec. 22, p. 2). The  
8 application additionally asked whether she had ever been  
9 "arrested, cited, charged, indicted, convicted, fined or  
10 imprisoned for breaking or violating any law or ordinance."  
11 Again, she responded "no." (Ct. Rec. 22, p. 2).

12 While processing Plaintiff's application for naturalization,  
13 Defendant discovered the 1997 smuggling arrest. (Ct. Rec. 22, p.  
14 2). Plaintiff was interviewed on September 13, 2004. (Ct. Rec.  
15 22, pp. 2-3). She indicated that she never knowingly and for gain  
16 helped any alien to enter the U.S. illegally and has never had any  
17 problems with immigration at the border or anywhere else. (Ct.  
18 Rec. 22, p. 3).

19 On January 7, 2005, Plaintiff's naturalization petition was  
20 denied for lack of good moral character because she had made false  
21 statements while under oath and because of her 1997 smuggling  
22 activity. (Ct. Rec. 22, p. 3).

23 On appeal from this determination, Plaintiff admitted to the  
24 smuggling, but stated that she did it "without any bad intention."  
25 (Ct. Rec. 22, p. 3). In a notarized statement, she stated that  
26 she wished she could have explained "all this situation but [she]  
27 was sure that [she] was not able too, [sic] [she] also knew that  
28 [she] was going to get this kind of answer." (Ct. Rec. 22, p. 3).

1 Plaintiff asked for forgiveness and explained that she "had to do  
2 everything that [she] could do for [her] children." (Ct. Rec. 22,  
3 p. 3).

4 On July 22, 2005, after consideration of all the evidence and  
5 testimony in the case, the denial of Plaintiff's naturalization  
6 application was affirmed. (Ct. Rec. 22, p. 5). Plaintiff was  
7 found to be ineligible because of a lack of good moral character.  
8 (Ct. Rec. 22, p. 5).

9 **SUMMARY JUDGEMENT STANDARD**

10 Summary judgment is appropriate when it is demonstrated that  
11 there exists no genuine issue as to any material fact, and that  
12 the moving party is entitled to judgment as a matter of law. Fed.  
13 R. Civ. P. 56(c). Under summary judgment practice, the moving  
14 party

15 [A]lways bears the initial responsibility of informing the  
16 district court of the basis for its motion, and identifying  
17 those portions of "the pleadings, depositions, answers to  
18 interrogatories, and admissions on file, together with the  
19 affidavits, if any," which it believes demonstrate the  
20 absence of a genuine issue of material fact.

21 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the  
22 nonmoving party will bear the burden of proof at trial on a  
23 dispositive issue, a summary judgment motion may properly be made  
24 in reliance solely on the 'pleadings, depositions, answers to  
25 interrogatories, and admissions on file.'" *Id.* Indeed, summary  
26 judgment should be entered, after adequate time for discovery and  
27 upon motion, against a party who fails to make a showing  
28 sufficient to establish the existence of an element essential to  
that party's case, and on which that party will bear the burden of  
proof at trial. *Celotex Corp.*, 477 U.S. at 322. "[A] complete  
failure of proof concerning an essential element of the nonmoving

1 party's case necessarily renders all other facts immaterial." *Id.*  
2 In such a circumstance, summary judgment should be granted, "so  
3 long as whatever is before the district court demonstrates that  
4 the standard for entry of summary judgment, as set forth in Rule  
5 56(c), is satisfied." *Id.* at 323.

6 If the moving party meets its initial responsibility, the  
7 burden then shifts to the opposing party to establish that a  
8 genuine issue as to any material fact actually does exist.  
9 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
10 586 (1986). In attempting to establish the existence of this  
11 factual dispute, the opposing party may not rely upon the denials  
12 of its pleadings, but is required to tender evidence of specific  
13 facts in the form of affidavits, and/or admissible discovery  
14 material, in support of its contention that the dispute exists.  
15 Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 586 n. 11. The  
16 opposing party must demonstrate that the fact in contention is  
17 material, i.e., a fact that might affect the outcome of the suit  
18 under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
19 242, 248 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec.*  
20 *Contractors Ass'n*, 809 F.2d 626, 630 (9<sup>th</sup> Cir. 1987), and that the  
21 dispute is genuine, i.e., the evidence is such that a reasonable  
22 jury could return a verdict for the nonmoving party, *Wool v.*  
23 *Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9<sup>th</sup> Cir. 1987).

24 In the endeavor to establish the existence of a factual  
25 dispute, the opposing party need not establish a material issue of  
26 fact conclusively in its favor. It is sufficient that "the  
27 claimed factual dispute be shown to require a jury or judge to  
28 resolve the parties' differing versions of the truth at trial."

1 *T.W. Elec. Serv.*, 809 F.2d at 631. Thus, the "purpose of summary  
2 judgment is to 'pierce the pleadings and to assess the proof in  
3 order to see whether there is a genuine need for trial.'" *Matsushita*, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)  
4 advisory committee's note on 1963 amendments).

5  
6 In resolving the summary judgment motion, the court examines  
7 the pleadings, depositions, answers to interrogatories, and  
8 admissions on file, together with the affidavits, if any. Fed. R.  
9 Civ. P. 56(c). The evidence of the opposing party is to be  
10 believed, *Anderson*, 477 U.S. at 255, and all reasonable inferences  
11 that may be drawn from the facts placed before the court must be  
12 drawn in favor of the opposing party, *Matsushita*, 475 U.S. at 587  
13 (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)  
14 (per curiam). Nevertheless, inferences are not drawn out of the  
15 air, and it is the opposing party's obligation to produce a  
16 factual predicate from which the inference may be drawn. *Richards*  
17 *v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal.  
18 1985), *aff'd*, 810 F.2d 898, 902 (9<sup>th</sup> Cir. 1987).

19 Finally, to demonstrate a genuine issue, the opposing party  
20 "must do more than simply show that there is some metaphysical  
21 doubt as to the material facts. Where the record taken as a whole  
22 could not lead a rational trier of fact to find for the nonmoving  
23 party, there is no 'genuine issue for trial.'" *Matsushita*, 475  
24 U.S. at 587 (citation omitted).

#### 25 DISCUSSION

26 The issue before the Court is whether, as a matter of law,  
27 Plaintiff lacks the "good moral character" requirement for  
28 naturalization.

1       The Immigration and Nationality Act expressly requires an  
2 applicant for naturalization to be a person of good moral  
3 character. 8 U.S.C. § 1427(a)(3). Pursuant to 8 U.S.C. §  
4 1101(f), no person shall be regarded as a person of good moral  
5 character who "has given false testimony for the purpose of  
6 obtaining any benefits under this chapter." 8 U.S.C. §  
7 1101(f)(6). Pursuant to 8 C.F.R. § 316.10, an applicant shall be  
8 found to lack good moral character if she "[h]as given false  
9 testimony to obtain any benefit from the Act, if the testimony was  
10 made under oath or affirmation and with an intent to obtain an  
11 immigration benefit; this prohibition applies regardless of  
12 whether the information provided in the false testimony was  
13 material, as in the sense that if given truthfully it would have  
14 rendered ineligible for benefits either the applicant or the  
15 person on whose behalf the applicant sought the benefit." 8  
16 C.F.R. § 316.10(b)(2)(vi). Based on the foregoing, a  
17 naturalization applicant lacks good moral character if she has  
18 given false testimony in order to gain any benefit from the  
19 Immigration and Nationality Act.

20       The statements Plaintiff made in her application and during  
21 her interview were not truthful. Plaintiff does not, and can not,  
22 contest this fact. (Ct. Rec. 22; Ct. Rec. 29, pp. 3-4). It is  
23 undisputed that she was arrested and charged with alien smuggling  
24 in February of 1997. (Ct. Rec. 22, p. 1). Plaintiff explained in  
25 a notarized statement that she knew that she "was going to get  
26 this kind of answer" but that she "had to do everything that [she]  
27 could do for [her] children." (Ct. Rec. 22, p. 3). Plaintiff  
28 made false statements in her application and interview in order to

1 obtain immigration benefits. "[N]o person who has given false  
2 testimony for the purpose of obtaining benefits" shall be found to  
3 be a person of good moral character. 8 U.S.C. § 1101(f)(6); 8  
4 C.F.R. § 316.10(b)(2)(vi). While Plaintiff's response alleges  
5 that her false statements were made under duress<sup>1</sup> and because she  
6 did not understand the immigration officials' questions (Ct. Rec.  
7 29), Plaintiff has failed to provide a substantiated basis for a  
8 finding that, as a matter of law, she meets the "good moral  
9 character" requirement for naturalization.

10 In any event, Plaintiff has failed to establish a valid claim  
11 of duress as alleged. In the criminal context, the duress defense  
12 consists of three elements, each of which the defendant must prove  
13 by a preponderance of the evidence: (1) an immediate threat of  
14 death or serious bodily injury, (2) a well-grounded fear that the  
15 threat will be carried out, and (3) lack of a reasonable  
16 opportunity to escape the threatened harm. *U.S. v. Verduzco*, 373  
17 F.3d 1022, 1030 (9<sup>th</sup> Cir. 2004). Plaintiff's response memorandum  
18 fails to make a showing, by affidavit or otherwise, that would  
19 cause a reasonable person to believe that Plaintiff was coerced,  
20 under the immediate threat of death or serious bodily injury, to  
21 act in the manner in which she acted. Plaintiff's bare assertion  
22 of duress, without more, does not provide the facts necessary to  
23 prove the defense. Accordingly, even if a duress defense was  
24 applicable in the naturalization context, Plaintiff has failed to  
25 establish a valid defense of duress.

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27 <sup>1</sup>Plaintiff asserts that she is a victim of domestic violence and feared  
28 that her husband would harm her if she answered the Immigration officials'  
questions truthfully. (Ct. Rec. 29, p. 1). Plaintiff cites the Violence  
Against Women Act, as support for her duress defense. However, this statute  
does not apply to applications for naturalization. Moreover, as noted in the  
body of this order, Plaintiff has failed to substantiate her claim of duress.  
ORDER - 7

1       There is no genuine issue for trial with respect to  
2 Plaintiff's Petition for Review. (Ct. Rec. 4). Therefore, the  
3 undersigned judicial officer finds that Defendant has met its  
4 burden as the party moving for summary judgment.

5                               **CONCLUSION**

6       For the reasons discussed above, the Court **GRANTS** Defendant's  
7 motion for summary judgment. (Ct. Rec. 20).

8       **IT IS SO ORDERED.** The District Court Executive is hereby  
9 directed to enter judgment in favor of Defendant and against  
10 Plaintiff, file this Order, provide a copy to counsel for  
11 Plaintiff and Defendant, and **CLOSE** this file.

12       DATED this 7<sup>th</sup> day of August, 2007.

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14   S/Lonny R. Suko  
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   LONNY R. SUKO  
15   UNITED STATES DISTRICT JUDGE  
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